

CHAPTER 10

TITLE OF OFFICE OF CITIZENS' AIDE

H.F. 185

AN ACT relating to the title of the office of citizens' aide.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 2.12, unnumbered paragraph 4, Code 2013, is amended to read as follows:

There is appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary for the fiscal year budgets of the legislative services agency and the ~~citizens' aide~~ ombudsman office for salaries, support, maintenance, and miscellaneous purposes to carry out their statutory responsibilities. The legislative services agency and the ~~citizens' aide~~ ombudsman office shall submit their proposed budgets to the legislative council not later than September 1 of each year. The legislative council shall review and approve the proposed budgets not later than December 1 of each year. The budget approved by the legislative council for each of its statutory legislative agencies shall be transmitted by the legislative council to the department of management on or before December 1 of each year for the fiscal year beginning July 1 of the following year. The department of management shall submit the approved budgets received from the legislative council to the governor for inclusion in the governor's proposed budget for the succeeding fiscal year. The approved budgets shall also be submitted to the chairpersons of the committees on appropriations. The committees on appropriations may allocate from the funds appropriated by this section the funds contained in the approved budgets, or such other amounts as specified, pursuant to a concurrent resolution to be approved by both houses of the general assembly. The director of the department of administrative services shall issue warrants for salaries, support, maintenance, and miscellaneous purposes upon requisition by the administrative head of each statutory legislative agency. If the legislative council elects to change the approved budget for a legislative agency prior to July 1, the legislative council shall transmit the amount of the budget revision to the department of management prior to July 1 of the fiscal year, however, if the general assembly approved the budget it cannot be changed except pursuant to a concurrent resolution approved by the general assembly.¹

Sec. 2. Section 2.42, subsection 14, Code 2013, is amended to read as follows:

14. To hear and act upon appeals of aggrieved employees of the legislative services agency and the office of the ² ~~citizens' aide~~ ombudsman pursuant to rules of procedure established by the council.

Sec. 3. Section 2C.2, Code 2013, is amended to read as follows:

2C.2 Office established.

The office of ~~citizens' aide~~ ombudsman is established.

Sec. 4. Section 2C.3, Code 2013, is amended to read as follows:

2C.3 Appointment — vacancy.

1. The ~~citizens' aide~~ ombudsman shall be appointed by the legislative council with the approval and confirmation of a constitutional majority of the senate and with the approval and confirmation of a constitutional majority of the house of representatives. The legislative council shall fill a vacancy in this office in the same manner as the original appointment. If the appointment or vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate and the house of representatives within thirty days of their convening at their next regular session for approval and confirmation.

2. The ~~citizens' aide~~ ombudsman shall employ and supervise all employees under the ~~citizens' aide's~~ ombudsman's direction in such positions and at such salaries as shall be

¹ See chapter 140, §45 herein

² See chapter 140, §46 herein

authorized by the legislative council. The legislative council shall hear and act upon appeals of aggrieved employees of the office of the ³ citizens' aide ombudsman.

Sec. 5. Section 2C.4, Code 2013, is amended to read as follows:

2C.4 Citizen of United States and resident of Iowa.

The citizens' aide ombudsman shall be a citizen of the United States and a resident of the state of Iowa, and shall be qualified to analyze problems of law, administration, and public policy.

Sec. 6. Section 2C.5, Code 2013, is amended to read as follows:

2C.5 Term — removal.

The citizens' aide ombudsman shall hold office for four years from the first day in July of the year of approval by the senate and the house of representatives, and until a successor is appointed by the legislative council, unless the citizens' aide ombudsman can no longer perform the official duties, or is removed from office. The citizens' aide ombudsman may at any time be removed from office by constitutional majority vote of the two houses of the general assembly or as provided by chapter 66. If a vacancy occurs in the office of citizens' aide ombudsman, the deputy citizens' aide ombudsman shall act as citizens' aide ombudsman until the vacancy is filled by the legislative council.

Sec. 7. Section 2C.6, Code 2013, is amended to read as follows:

2C.6 Deputy — assistant for penal agencies.

1. The citizens' aide ombudsman shall designate one of the members of the staff as the deputy citizens' aide ombudsman, with authority to act as citizens' aide ombudsman when the citizens' aide ombudsman is absent from the state or becomes disabled. The citizens' aide ombudsman may delegate to members of the staff any of the citizens' aide's authority or duties of the office except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

2. The citizens' aide ombudsman shall appoint an assistant who shall be primarily responsible for investigating complaints relating to penal or correctional agencies.

Sec. 8. Section 2C.7, unnumbered paragraph 1, Code 2013, is amended to read as follows: Neither the citizens' aide ombudsman nor any member of the staff shall:

Sec. 9. Section 2C.8, Code 2013, is amended to read as follows:

2C.8 Closed files.

The citizens' aide ombudsman may maintain secrecy in respect to all matters including the identities of the complainants or witnesses coming before the citizens' aide ombudsman, except that the general assembly, any standing committee of the general assembly or the governor may require disclosure of any matter and shall have complete access to the records and files of the citizens' aide ombudsman. The citizens' aide ombudsman may conduct private hearings.

Sec. 10. Section 2C.9, Code 2013, is amended to read as follows:

2C.9 Powers.

The citizens' aide ombudsman may:

1. Investigate, on complaint or on the citizens' aide's ombudsman's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide ombudsman shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency except as otherwise provided by this chapter. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Investigate, on complaint or on the citizens' aide's ombudsman's own motion, any administrative action of any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the citizens' aide ombudsman. The

³ See chapter 140, §47 herein

person shall be considered to be an agency for purposes of the ~~citizens' aide's~~ ombudsman's investigation.

3. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the ~~citizens' aide~~ ombudsman.

4. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. Notwithstanding section 22.7, pursuant to an investigation the ~~citizens' aide~~ ombudsman may examine any and all records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. Confidential documents provided to the ~~citizens' aide~~ ombudsman by other agencies shall continue to maintain their confidential status. The ~~citizens' aide~~ ombudsman is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The ~~citizens' aide~~ ombudsman may enter and inspect premises within any agency's control and may observe proceedings and attend hearings, with the consent of the interested party, including those held under a provision of confidentiality, conducted by any agency unless the agency demonstrates that the attendance or observation would violate federal law or result in the denial of federal funds to that agency. This subsection does not permit the examination of records or access to hearings and proceedings which are the work product of an attorney under section 22.7, subsection 4, or which are privileged communications under section 622.10.

5. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The ~~citizens' aide~~ ombudsman, deputies, and assistants of the ~~citizens' aide~~ ombudsman may administer oaths to persons giving testimony before them. If a witness either fails or refuses to obey a subpoena issued by the ~~citizens' aide~~ ombudsman, the ~~citizens' aide~~ ombudsman may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

6. Establish rules relating to the operation, organization, and procedure of the office of the ~~citizens' aide~~ ombudsman. The rules are exempt from chapter 17A and shall be published in the Iowa administrative code.

Sec. 11. Section 2C.10, Code 2013, is amended to read as follows:

2C.10 No charge for services.

~~No~~ A monetary charge or other charge shall not be levied upon any person as a prerequisite to presentation of a complaint to the ~~citizens' aide~~ ombudsman.

Sec. 12. Section 2C.11, Code 2013, is amended to read as follows:

2C.11 Subjects for investigations.

1. An appropriate subject for investigation by the office of the ⁵ ~~citizens' aide~~ ombudsman is an administrative action that might be:

- a. Contrary to law or regulation.
- b. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
- c. Based on a mistake of law or arbitrary in ascertainties of fact.
- d. Based on improper motivation or irrelevant consideration.
- e. Unaccompanied by an adequate statement of reasons.

2. The ~~citizens' aide~~ ombudsman may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.

Sec. 13. Section 2C.11A, Code 2013, is amended to read as follows:

2C.11A Subjects for investigations — disclosures of information.

⁴ See chapter 140, §48 herein

⁵ See chapter 140, §49 herein

The office of ~~citizens' aide~~ ombudsman shall investigate a complaint filed by an employee who is not a merit system employee or an employee covered by a collective bargaining agreement and who alleges that adverse employment action has been taken against the employee in violation of section 70A.28, subsection 2. A complaint filed pursuant to this section shall be made within thirty calendar days following the effective date of the adverse employment action. The ~~citizens' aide~~ ombudsman shall investigate the matter and shall issue findings relative to the complaint in an expeditious manner.

Sec. 14. Section 2C.12, Code 2013, is amended to read as follows:

2C.12 Complaints investigated.

1. The ~~citizens' aide~~ ombudsman may receive a complaint from any source concerning an administrative action. The ~~citizens' aide~~ ombudsman shall conduct a suitable investigation into the administrative actions complained of unless the ~~citizens' aide~~ ombudsman finds substantiating facts that:

a. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use.

b. The grievance pertains to a matter outside the ~~citizens' aide~~ ombudsman's power.

c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.

d. The complaint is trivial, frivolous, vexatious, or not made in good faith.

e. Other complaints are more worthy of attention.

f. The ~~citizens' aide~~ ombudsman's resources are insufficient for adequate investigation.

g. The complaint has been delayed too long to justify present examination of its merit.

2. The ~~citizens' aide~~ ombudsman may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.

Sec. 15. Section 2C.13, Code 2013, is amended to read as follows:

2C.13 No investigation — notice to complainant.

If the ~~citizens' aide~~ ombudsman decides not to investigate, the complainant shall be informed of the reasons for the decision. If the ~~citizens' aide~~ ombudsman decides to investigate, the complainant and the agency shall be notified of the decision. After completing consideration of a complaint, whether or not it has been investigated, the ~~citizens' aide~~ ombudsman shall without delay inform the complainant of the fact, and if appropriate, shall inform the agency involved. The ~~citizens' aide~~ ombudsman shall on request of the complainant, and as appropriate, report the status of the investigation to the complainant.

Sec. 16. Section 2C.14, Code 2013, is amended to read as follows:

2C.14 Institutionalized complainants.

A letter to the ~~citizens' aide~~ ombudsman from a person in a correctional institution, a hospital, or other institution under the control of an agency shall be immediately forwarded, unopened, to the ~~citizens' aide~~ ombudsman by the institution where the writer of the letter is a resident. A letter from the ~~citizens' aide~~ ombudsman to such a person shall be immediately delivered, unopened, to the person.

Sec. 17. Section 2C.15, Code 2013, is amended to read as follows:

2C.15 Reports critical of agency or officer.

Before announcing a conclusion or recommendation that criticizes an agency or any officer or employee, the ~~citizens' aide~~ ombudsman shall consult with that agency, officer, or employee, and shall attach to every report sent or made under the provisions of this chapter a copy of any unedited comments made by or on behalf of the officer, employee, or agency.

Sec. 18. Section 2C.16, Code 2013, is amended to read as follows:

2C.16 Recommendations to agency.

1. The ~~citizens' aide~~ ombudsman shall state recommendations to an agency, if, after having considered a complaint and whatever material the ~~citizens' aide~~ ombudsman deems pertinent, the ~~citizens' aide~~ ombudsman finds substantiating facts for any of the following:

- a. A matter should be further considered by the agency.
 - b. An administrative action should be modified or canceled.
 - c. A rule on which an administrative action is based should be altered.
 - d. Reasons should be given for an administrative action.
 - e. Any other action should be taken by the agency.
2. If the citizens' aide ombudsman requests, the agency shall, within twenty working days notify the citizens' aide ombudsman of any action taken on the recommendations or the reasons for not complying with them.
3. If the citizens' aide ombudsman believes that an administrative action has occurred because of laws of which results are unfair or otherwise objectionable, the citizens' aide ombudsman shall notify the general assembly concerning desirable statutory change.

Sec. 19. Section 2C.17, Code 2013, is amended to read as follows:

2C.17 Publication of conclusions.

1. The citizens' aide ombudsman may publish the conclusions, recommendations, and suggestions and transmit them to the governor or the general assembly or any of its committees. When publishing an opinion adverse to an agency or official the citizens' aide ombudsman shall, unless excused by the agency or official affected, include with the opinion any unedited reply made by the agency.
2. Any conclusions, recommendations, and suggestions so published may at the same time be made available to the news media or others who may be concerned.

Sec. 20. Section 2C.18, Code 2013, is amended to read as follows:

2C.18 Report to general assembly.

The citizens' aide ombudsman shall by April 1 of each year submit an economically designed and reproduced report to the general assembly and to the governor concerning the exercise of the citizens' aide ombudsman⁶ functions during the preceding calendar year. In discussing matters with which the citizens' aide ombudsman has been concerned, the citizens' aide ombudsman shall not identify specific persons if to do so would cause needless hardship. If the annual report criticizes a named agency or official, it shall also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected.

Sec. 21. Section 2C.19, Code 2013, is amended to read as follows:

2C.19 Disciplinary action recommended.

If the citizens' aide ombudsman believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, the citizens' aide ombudsman shall refer the matter to the appropriate authorities.

Sec. 22. Section 2C.20, Code 2013, is amended to read as follows:

2C.20 Immunities.

No civil action, except removal from office as provided in chapter 66, or proceeding shall be commenced against the citizens' aide ombudsman or any member of the staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the citizens' aide ombudsman or any member of the staff be compelled to testify in any court with respect to any matter involving the exercise of the citizens' aide's ombudsman's official duties except as may be necessary to enforce the provisions of this chapter.

Sec. 23. Section 2C.21, Code 2013, is amended to read as follows:

2C.21 Witnesses.

A person required by the citizens' aide ombudsman to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the district courts of this state. Officers and employees of an agency shall not be entitled to such fees and allowances. A person who, with or without service of compulsory process, provides oral or documentary information requested by the citizens'

⁶ See chapter 140, §50 herein

citizens' aide ombudsman shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned.

Sec. 24. Section 2C.22, Code 2013, is amended to read as follows:

2C.22 Penalties.

A person who willfully obstructs or hinders the lawful actions of the citizens' aide ombudsman or the citizens' aide's ombudsman's staff, or who willfully misleads or attempts to mislead the citizens' aide ombudsman in the citizens' aide's ombudsman's inquiries, shall be guilty of a simple misdemeanor.

Sec. 25. Section 2C.23, Code 2013, is amended to read as follows:

2C.23 Citation.

This chapter shall be known and may be cited as the "*Iowa Citizens' Aide Ombudsman Act*".

Sec. 26. Section 8F.3, subsection 1, paragraph d, Code 2013, is amended to read as follows:

d. Information regarding any policies adopted by the governing body of the recipient entity that prohibit taking adverse employment action against employees of the recipient entity who disclose information about a service contract to the oversight agency, the auditor of state, the office of the attorney general, or the office of citizens' aide ombudsman and that state whether those policies are substantially similar to the protection provided to state employees under section 70A.28. The information provided shall state whether employees of the recipient entity are informed on a regular basis of their rights to disclose information to the oversight agency, the office of citizens' aide ombudsman, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.

Sec. 27. Section 23A.4, Code 2013, is amended to read as follows:

23A.4 Relief for aggrieved persons.

1. Any aggrieved person may, after pursuing remedies offered by chapter 17A, seek injunctive relief for violations of this chapter by filing an action in the district court for the county in which the aggrieved business is located.

2. A state agency or political subdivision found to be in violation of this chapter shall be assessed and shall pay to the aggrieved person fees and other expenses, as defined in section 625.28.

3. Chapter 17A and this section are the exclusive remedy for violations of this chapter. However, the office of the ⁷ citizens' aide ombudsman may review violations of this chapter and make recommendations as provided in chapter 2C.

Sec. 28. Section 70A.28, subsections 2, 6, and 8, Code 2013, are amended to read as follows:

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, a disclosure of information to the office of citizens' aide ombudsman, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

⁷ See chapter 140, §52 herein

6. Subsection 2 may also be enforced by an employee through an administrative action pursuant to the requirements of this subsection if the employee is not a merit system employee or an employee covered by a collective bargaining agreement. An employee eligible to pursue an administrative action pursuant to this subsection who is discharged, suspended, demoted, or otherwise receives a reduction in pay and who believes the adverse employment action was taken as a result of the employee's disclosure of information that was authorized pursuant to subsection 2, may file an appeal of the adverse employment action with the public employment relations board within thirty calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of the ⁸ citizens' aide ombudsman pursuant to section 2C.11A. The findings issued by the citizens' aide ombudsman may be introduced as evidence before the public employment relations board. The employee has the right to a hearing closed to the public, but may request a public hearing. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken in regard to the employee was in violation of subsection 2, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

8. The director of the department of administrative services or, for employees of the general assembly or of the state board of regents, the legislative council or the state board of regents, respectively, shall provide procedures for notifying new state employees of the provisions of this section and shall periodically conduct promotional campaigns to provide similar information to state employees. The information shall include the toll-free telephone number of the citizens' aide ombudsman.

Sec. 29. Section 217.3A, subsection 3, paragraph a, subparagraph (1), Code 2013, is amended to read as follows:

(1) Members of the advisory committee shall include at least one district judge and representatives of custodial parent groups, noncustodial parent groups, the general assembly, the office of citizens' aide ombudsman, the Iowa state bar association, the Iowa county attorneys association, and other constituencies which have an interest in child support enforcement issues, appointed by the respective entity.

Sec. 30. Section 236.16, subsection 1, paragraph c, Code 2013, is amended to read as follows:

c. Designate and award moneys for publicizing and staffing a statewide, toll-free telephone hotline for use by victims of domestic abuse. The department may award a grant to a public agency or a private, nonprofit organization for the purpose of operating the hotline. The operation of the hotline shall include informing victims of their rights and of various community services that are available, referring victims to service providers, receiving complaints concerning misconduct by peace officers and encouraging victims to refer such complaints to the office of citizens' aide ombudsman, providing counseling services to victims over the telephone, and providing domestic abuse victim advocacy.

Approved March 28, 2013

⁸ See chapter 140, §55 herein